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SECRETARY

COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
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DENISE MOORE DAVIDSON,
CHAIR
WILLIAM D. DONAN
STAN CAVE

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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JANUARY 10, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSCR" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, Commissioner William D. Donan and Commissioner Stan Cave were present. Also in attendance was the MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 p.m. EST
- ❑ **Declaration of a Quorum:** Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office of Legal Services was present representing the Office of Mine Safety and Licensing. General Counsel DNR Mike Haines, his assistant Kari Sutherland, and staff attorneys for OLS were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **12/13/07** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

Motions - various;

- A motion was made by OMSL attorney Hon. Smock for the approval of a settlement in **06-MSRC-017 Gary Wayne Bentley**. Hon. Smallwood was present with his client, Bentley. Hon. Opegard attended and participated as in intervener. The Commission determined that the Settlement Agreement as tendered was rejected and continued the matter to the February meeting. Commissioner Donan so moved, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- Similar motions to continue **07-MSRC-143 William H. Harris** and **07-MSRC-125 Big Elk** so as to allow time for settlement were made. Commissioner Donan moved for approval, which was seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered by the Chair, Davidson.
- A motion was made by OMSL to settle **06-MSRC-073 Pat R. Childers**. He appeared and presented the **Settlement Agreement**. Commissioner Donan moved for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered by the Chair, Davidson.
- A motion was made by OMSL, and was not opposed by Hon. True, counsel for Sapphire, to **dismiss 07-MSRC-214 Sapphire Coal** for lack of subject matter jurisdiction. Commissioner Donan moved for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered by the Chair, Davidson.
- A motion for **default** for failure to timely respond to the Complaint was made in **07-MSRC-187 Dickie Lee Cantrell**. This motion was unopposed and thus was granted. Commissioner Donan moved for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered by the Chair, Davidson.
- A motion was made in regard to **07-MSRC-200 Rocky Niece** to approve the tendered Settlement Agreement. He appeared and presented the agreement. Commissioner Donan made a motion to grant the motion to approve the **Settlement Agreement**, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Chair Davidson.
- ❑ **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- 07-MSRC-108 was called in regard to **Steven M. Kilgore**. OMSL presented proof that he failed to attend counseling as provided in the settlement agreement adopted as a final order of MSRC. After this motion was filed he presented proof of attendance. Thus OMSL moved to **withdraw** its motion for sanctions. Commissioner Donan made a motion to grant the motion to withdraw, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- 06-MSRC-110 was called in regard to **Michael J. Dunigan**. OMSL presented proof that he failed to comply with the requirement to submit drug tests that the settlement agreement adopted as a final order of MSRC. He alleged and OMSL confirmed that his home burned. For that reason he moved to **continue** this matter to February 14, 2008. Commissioner Donan made a motion to grant the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

The Commission heard the appeal of **Christopher E. Collier** in 07-MSRC-221. Mr. Collier appeared and offered only his testimony. OMSL called one witness Ed Banks the former employer of Collier. Collier failed to rebut the testimony and laboratory tests presented by OMSL demonstrating a violation of KRS 351.120(12). Commissioner Donan moved to **deny** the appeal and enter an Order consistent with the prayer in the Complaint. This was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Commissioner Davidson signed the Order.

The Commission discussed the procedurally similar KRS 351.120(12) appeals of 07-MSRC-150 **Brian Joe Morris**, 07-MSRC-182 **Michael Beverly**, and 07-MSRC-228 **Larry D. Bard**. They either appeared or called and moved for **continuances to February 14, 2008** so that they may perfect their appeals. Commissioner Donan so moved as to each. These were seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.

The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 07-MSRC-171 **Joshua R. Meade** ; 07-MSRC-223 **Rodney Nobel**; 07-MSRC-224 **Matthew H. Potter**; 07-MSRC-230 **Jeffery Steven Pratt**; 07-MSRC-231 **Jerry Johnson**; 07-MSRC-232 **Jason Bradley Patrick**; 07-MSRC-233 **David Thomason**; 07-MSRC-234 **Isaac Fields**; 07-MSRC-235 **Sheila F. Allen**; and 07-MSRC- 236 **Lyle Collett**; 07-MSRC-237 **Larry Coleman**; 07-MSRC-239 **Robert Owens**; 07-MSRC-240

Jody Duncan; 07-MSRC-241 **Johnny Ray Halcomb** and 07-MSRC-245 **Randall Bowman**; in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson recused herself from the discussion and determinations on Collett and Cave recused himself on Halcomb citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders except for the recusals which were signed by Commissioner Donan.

The Commission heard the KRS 351.120(12) Petition for Appeal of 07-MSRC-238 **Leemon A. Asher**. He appeared and presented evidence to show that his suspension was in error because he had valid prescriptions for the relevant time period for the reported drug. He therefore moved to have his certificates reinstated. Commissioner Donan made the motion to **Sustain the appeal and restore the certificates** which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

The Commission called also the KRS 351.120(12) Petition for Appeal of 07-MSRC-210 **Jacob K. Taylor**, who was duly notified and scheduled for the hearing they requested for this meeting. He was Ordered to **Show Cause** as to why his certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

The Commission called the cases of 07-MSRC-209 **Alex M. Johnson** and 07-MSRC-212 **Paul D. Swanson**. Both failed to appear despite notice at the last meeting and failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** as to each which was seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

Petitioner **Eric V. Holbrook** in 07-MSRC-242 moved to withdraw his appeal, and this was not opposed by OMSL. Commissioner Donan moved for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered by the Chair, Davidson.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

None were set for this meeting.

The 11:00 a.m. Docket for “initial denial” pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:

None were set for this meeting.

The 11:00 a.m. Docket for Motions to Reconsider:

06-MSRC-050 was called in regard to the motion to reconsider filed by **Ronnie Caldwell**. He appeared with counsel, Hon. Dixon. Commissioner Davidson recused citing a conflict. After consideration MSRC determined that his motion to reconsider should be **denied**. Commissioner Donan so moved, Cave gave the second and Donan signed the Order.

Counsel Hon. Roper in 06-MSRC-042 **Ralf Hurley** moved for a continuance due to a criminal trial. Commissioner Donan made a motion to grant the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

The 1:00 p.m. Docket for “traditional” type cases:

06-MSRC-073 **Alger Jent** was called for a hearing. Jent was represented by Hon. Mullins. The Hon. Haines represented OMSL. All the witnesses were present. At the call of the hearing the parties announced that they reached the terms of settlement and the terms were presented to and approved by MSRC. Commissioner Donan made a motion to grant the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

Petitions for an Order filed by OMSL in roof control cases:

07-MSRC-247 **Viper Coal** was called. No one appeared for the Respondent. OMSL moved for an Order assessing a civil penalty. Commissioner Donan made a motion to grant the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

07-MSRC248 **Murriel-Don Coal, Inc.**, was called. No one appeared for the Respondent. OMSL moved for an Order assessing a civil penalty. Commissioner Donan made a motion to grant the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

Old Business

- ❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on **Thursday January 10**, and the likelihood of several traditional type hearings.

❑ **Status Report & Abeyances;**

Counsel for 06-MSRC-015 **Moore & Rutherford** filed status reports. The MSHA investigation continues and thus they moved to keep this matter in **abeyance**. This was set for a status report for July 8, 2008. Commissioner Donan made a motion to grant the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

❑ **Appeals**

- ❑ The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a briefing schedule. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. Hon. Haines, counsel for OMSL stated briefing was underway.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a briefing schedule.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains to forty three (43) cents per mile from October 1 to December 31, 2007.

❑ **Training**

- ❑ The required KYOAG annual hearing officer training has been scheduled for June 25, 2008.

- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the above referenced hearings and then reconvened to issue orders as appropriate.

- ❑ **Probable Cause Determinations**

None submitted for consideration at this meeting.

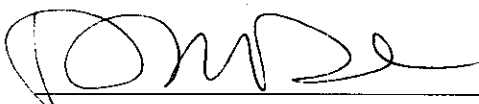
- ❑ **Settlement Agreements**

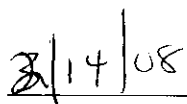
The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday February 14, 2008.**
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on the second Thursday of the month with this next meeting on Thursday February 14, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:


Chair Denise Moore Davidson
Mine Safety Review Commission


Date